

§ 102-38.55

investigating agency assuming jurisdiction of the matter; and

(b) Submit to the General Services Administration (GSA), Property Management Division (FBP), 1800 F Street, NW., Washington, DC 20406, a report of any compliance investigations concerning such violations. The report must contain information concerning the noncompliance, including the corrective action taken or contemplated, and, for cases referred to the Department of Justice, a copy of the transmittal letter. A copy of each report must be submitted also to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

§ 102-38.55 What must we do when selling personal property?

When selling personal property, you must ensure that—

(a) All sales are made after publicly advertising for bids, except as provided for negotiated sales in §§102-38.100 through 102-38.125; and

(b) Advertising for bids must permit full and free competition consistent with the value and nature of the property involved.

§ 102-38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?

The holding agency is responsible for the care and handling costs of the personal property until it is removed by the buyer, the buyer's designee, or an SC. The holding agency may request the SC to perform care and handling services in accordance with their agreement. When specified in the terms and conditions of sale, the SC may charge the buyer costs for storage when the buyer is delinquent in removing the property. The amount so charged may only be retained by the holding agency performing the care and handling in accordance with §102-38.295.

[73 FR 20803, Apr. 17, 2008]

41 CFR Ch. 102 (7-1-10 Edition)

§ 102-38.65 What if we are or the holding agency is notified of a Federal requirement for surplus personal property before the sale is complete?

Federal agencies have first claim to excess or surplus personal property reported to the General Services Administration. When a bona fide need for the property exists and is expressed by a Federal agency, and when no like item(s) are located elsewhere, you or the holding agency must make the property available for transfer to the maximum extent practicable and prior to transfer of title to the property.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

§ 102-38.70 May the holding agency abandon or destroy personal property either prior to or after trying to sell it?

(a) Yes, the holding agency may abandon or destroy personal property either prior to or after trying to sell it, but only when an authorized agency official has made a written determination that—

(1) The personal property has no commercial value; or

(2) The estimated cost of continued care and handling would exceed the estimated sales proceeds.

(b) In addition to the provisions in paragraph (a) of this section, see the regulations at §§102-36.305 through 102-36.330 of this subchapter B that are applicable to the abandonment or destruction of personal property in general, and excess personal property in particular.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

Subpart B—Sales Process

METHODS OF SALE

§ 102-38.75 How may we sell personal property?

(a) You will sell personal property upon such terms and conditions as the head of your agency or designee deems proper to promote the fairness, openness, and timeliness necessary for the sale to be conducted in a manner most advantageous to the Government.

Federal Management Regulation

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When you are selling property on behalf of another agency, you must consult with the holding agency to determine any special or unique sales terms and conditions. You must also document the required terms and conditions of each sale, including, but not limited to, the following terms and conditions, as applicable:

- (1) Inspection.
- (2) Condition and location of property.
- (3) Eligibility of bidders.
- (4) Consideration of bids.
- (5) Bid deposits and payments.
- (6) Submission of bids.
- (7) Bid price determination.
- (8) Title.
- (9) Delivery, loading, and removal of property.
- (10) Default, returns, or refunds.
- (11) Modifications, withdrawals, or late bids.
- (12) Requirements to comply with applicable laws and regulations. 41 CFR part 101-42 contains useful guidance addressing many of these requirements. You should also contact your agency's Office of General Counsel or environmental office to identify applicable Federal, State, or local environmental laws and regulations.
- (13) Certificate of independent price determinations.
- (14) Covenant against contingent fees.
- (15) Limitation on Government's liability.
- (16) Award of contract.
- (b) Standard government forms (e.g., Standard Form 114 series) may be used to document terms and conditions of the sale.
- (c) When conducting and completing a sale through electronic media, the required terms and conditions must be included in your electronic sales documentation.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

§ 102-38.80 Which method of sale should we use?

(a) You may use any method of sale provided the sale is publicly advertised and the personal property is sold with full and open competition. Exceptions to the requirement for competitive bids for negotiated sales (including

fixed price sales) are contained in §§102-38.100 through 102-38.125. You must select the method of sale that will bring maximum return at minimum cost, considering factors such as—

- (1) Type and quantity of property;
- (2) Location of property;
- (3) Potential market;
- (4) Cost to prepare and conduct the sale;
- (5) Available facilities; and
- (6) Sales experience of the selling activity.
- (b) Methods of sale may include sealed bid sales, spot bid sales, auctions, or negotiated sales and may be conducted at a physical location or through any electronic media that is publicly accessible.

COMPETITIVE SALES

§ 102-38.85 What is a sealed bid sale?

A sealed bid sale is a sale in which bid prices are kept confidential until bid opening. Bids are submitted either electronically or in writing according to formats specified by the selling agency, and all bids are held for public disclosure at a designated time and place.

§ 102-38.90 What is a spot bid sale?

A spot bid sale is a sale where immediately following the offering of the item or lot of property, bids are examined, and awards are made or bids rejected on the spot. Bids are either submitted electronically or in writing according to formats specified by the selling agency, and must not be disclosed prior to announcement of award.

§ 102-38.95 What is an auction?

An auction is a sale where the bid amounts of different bidders are disclosed as they are submitted, providing bidders the option to increase their bids if they choose. Bids are submitted electronically and/or by those physically present at the sale. Normally, the bidder with the highest bid at the close of each bidding process is awarded the property.